

**GRANT COUNTY
DEPARTMENT OF PUBLIC DEFENSE**

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**INDIGENT DEFENSE-JUVENILE COURT
PROFESSIONAL SERVICES AGREEMENT**

TO: BOARD OF COUNTY COMMISSIONERS—GRANT COUNTY
FROM: BRETT HILL, DIRECTOR—DEPARTMENT OF PUBLIC DEFENSE
SUBJECT: PROPOSED PROFESSIONAL SERVICES AGREEMENT (PSA) FOR INDIGENT
DEFENSE—JUVENILE COURT
DATE: MAY 23, 2023

BACKGROUND:

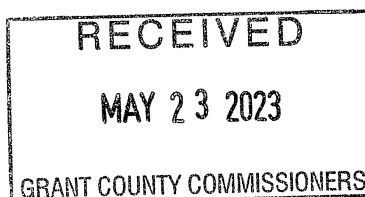
The issue of caseloads and our concerns of lack of attorneys has been discussed recently in the regularly scheduled meetings between the Director of Public Defense and the BOCC. An opportunity has arisen to contract with Peter Hibbard, an attorney who is leaving the employment of the Prosecuting Attorney's office. Attached is a copy of the proposed PSA which has been signed by Mr. Hibbard.

BUDGET:

The DPD budget for 2023 and anticipated 2024 budget contemplates funds to provide these constitutionally guaranteed services. In 2022 to present the cases were handled by staff attorneys. Prior to 2022 these services were taken care of by PSA. The impact on the budget will be less than providing the services with a staff attorney.

REQUEST:

My request is the Board of County Commissioners adopt and sign the Professional Services Agreement as presented.



**PROFESSIONAL SERVICES AGREEMENT
FOR LEGAL REPRESENTATION OF INDIGENT INDIVIDUALS
IN THE JUVENILE DIVISION OF GRANT COUNTY SUPERIOR COURT
(JUVENILE OFFENDERS ONLY)**

This Professional Services Agreement ("PSA") is entered by and between Grant County, a political subdivision of the State of Washington (hereinafter called the "County"), and the undersigned Public Defender (hereinafter called the "Public Defender"), who is fully admitted to practice law in the State of Washington.

- 1. PARTIES AND TERMS:** Grant County agrees to contract with **Peter Hibbard, WSBA #51833** (hereafter "Public Defender") as an independent attorney licensed to practice law in the State of Washington, to provide indigent defense legal services in the in the Juvenile Division of Grant County Superior Court as an independent contractor and who agrees to contract with the County to provide indigent defense services in accordance with the terms of this Agreement.

Duration: The term of this Agreement shall commence on the **1st day of June, 2023 and terminate on the 31st day of December, 2024** unless otherwise terminated pursuant to this Agreement. No notice is required to terminate this Agreement at the end of the term. The County has the option to renew this contract for a similar term at its sole discretion subject to mutual agreement by the parties on a compensation rate for the additional term.

- 2. DEFINITIONS.** For the purposes of this Agreement, the following definitions shall apply:
- a. "Public defense system" means any system or program under which Grant County provides, has provided, or is obligated to provide for the criminal defense of any indigent person charged in the Juvenile Division of Grant County Superior Court.
 - b. "Public defender" means any attorney who is hired by or contracts with Grant County to represent indigent persons charged with crimes or other applicable matters in the Juvenile Division of Grant County Superior Court.
 - c. "Standards for Indigent Defense" means the standards that have been adopted by the Washington State Supreme Court that are required by Juvenile Court Rule 9.2 (JuCR), and incorporated herein by reference.
 - d. "Director of Public Defense" (Director) means the attorney who is hired to supervise or oversee the system or program under which Grant County, provides, or is obligated to provide defense of any indigent person or any other applicable matter in the Juvenile Division of Grant County Superior Court.
 - e. "Policy" and/or "Policies" are defined as a policy or policies as developed by the Grant County Department of Public Defense.
 - f. "Good standing" (in relation to a Public Defender's membership status of the Washington State Bar Association) is defined as the public defender being current in his/her bar dues, continuing legal education credit hours, and has not had any bar complaints that were resolved adversely in any manner against the Public Defender.

- 3. PROFESSIONAL SERVICES.** Each Public Defender shall represent in a professional manner all juvenile offenders charged with an offense for whose representation he or she is appointed. The Public Defender shall also represent other individuals who have a right to public counsel for proceedings in Juvenile Court (*i.e.*, parents or children in ARY, CHINNS or contempt proceedings). Such representation shall include, but is not limited to, attendance at first appearances and bail hearings, preparation and appearance at all phases of court proceedings including arraignments, pretrial hearings, motions, trials, sentencing, post-trial motions and restitution hearings.

The Public Defender's duties also shall include the preparation and filing of all pleadings necessary to perfect an appeal beyond Superior Court when appropriate and representing an appellant until new counsel is appointed to process the appeal.

The Public Defender shall maintain a telephone line to receive calls from clients which shall be accessible to all clients including those being held in-custody pending further proceedings.

The Public Defender further represents and warrants that, throughout the entire term of this Agreement, Public Defender will have adequate time in Public Defender's practice and regular personal schedule and will have adequate office support staff services, office resources, and office equipment to competently undertake and effectively perform all services required under this Agreement. Public Defender further represents and warrants that Public Defender's personal schedule will not unduly or unreasonably interfere with Public Defender's ability to timely and efficiently perform such services including, without limitation, Public Defender's ability to prepare for and attend regularly scheduled trials and dockets or Public Defender's ability to schedule and conduct face-to-face meetings with the indigent persons Public Defender is appointed to represent under this Agreement for purposes of discussing, preparing, and pursuing the most viable defense(s) and/or resolution available to the alleged criminal charge(s) and keeping such persons reasonably apprised as to the status of their case.

The essential functions of this position include, but are not limited to: the ability to do all of the reading and writing necessary to file pleadings with the court; to attend court on a daily basis for up to eight hours a day as needed; to meet with clients both in the jail and at the Public Defender's own office; to travel as necessary to attend court hearings, interview witnesses and otherwise prepare for court and trial; to attend court during trial and to complete all other attendant tasks associated with competent case and trial management.

- 4. TRAINING AND QUALIFICATIONS OF PUBLIC DEFENDERS.** Public Defenders must be fully qualified and for each case appointed according to the Standards for Indigent Defense. Public Defender shall also engage in training as required by said standards and in accordance with the requirement as contained in RCW 10.105.

5. **COMPENSATION.** The Public Defender shall be paid **Ninety Thousand and No/100 Dollars (\$90,000.00) per year payable in twelve (12) monthly installments of Seven Thousand Five Hundred and 00/100 Dollars (\$7,500.00)** to handle a maximum of **one hundred eighty-seven and one-half (187.5) case equivalents** during each year of the contract term. In addition to the yearly compensation, Grant County shall pay the Public Defender **One Hundred Fifty and No/100 Dollars (\$150.00) per diem for each day or portion thereof in actual trial.** Because the in-trial hours are compensated by per diem, in-trial hours shall not be calculated toward any case equivalency unless otherwise determined by the Director of Public Defense. The Director of Public Defense shall distribute the cases to the Public Defender at his/her discretion. Except for genuine conflicts of interest, the Public Defender will be required to accept all cases assigned up to the maximum number of cases provided in this agreement, not to exceed **187.5** annualized case equivalents. In the event this contract is terminated by either party prior to the end of its term, the County shall pay the pro-rata amount based on the total months worked in the year of the termination.

In the event the Public Defender is assigned more than 187.5 case equivalents, the County will pay an additional Five Hundred Dollars (\$500.00) per case equivalent for each case in excess of 187.5. The Public Defender shall bill any excess cases to the County in accordance with the County's billing procedures.

The worksite is Ephrata, Washington, and the Juvenile Court in Grant County. The Public Defender will not be compensated for travel to and from the worksite for any reason. The Public Defender is further responsible for all costs and fees incurred in maintaining a law office including, but not limited to, rent, phones, copying, faxes, secretarial support, and all other costs and fees in maintaining a law office.

The County's designated representative will meet with the Public Defender starting no later than **September 15, 2024** to discuss the terms and conditions for the contract for the succeeding term.

The Defender shall receive additional compensation for travel to the Chelan County Juvenile Detention Facility for in-person consultation with assigned clients in the amount of One Hundred Fifty and No/100 Dollars (\$150.00) for each necessary round trip between Grant County, Washington and the Chelan County Juvenile Detention Facility. This amount is a flat fee that considers and is inclusive of mileage and any other ancillary costs. If the case for which travel is made is one which qualifies for extraordinary case credit per this agreement, the time spent with the client may be counted as time worked for the purpose of calculating the credit. The travel time will not be counted for such credit as it is compensated for herein.

6. **INVESTIGATORS.** Grant County shall provide Investigators for use by the Public Defender, at no cost to the Public Defender. Public Defenders shall use the Investigators provided by the County, as reasonable and necessary, unless otherwise specifically authorized by the Director of Public Defense. The Public Defender agrees to use the Grant County Department of Public Defense form for requesting the assignment of an Investigator.

7. **EXPERTS.** Grant County shall pay reasonable compensation for Expert Witnesses necessary for the defense of indigent defendants, including investigation, preparation and trial of a case, at no cost to the Public Defender. Public Defender shall obtain approval for Expert Witness fees by an appropriate motion to the Grant County Superior Court. Public Defenders shall be free to retain Experts of their choosing subject only to the limitations set forth by the Superior Court's order approving the hiring of the Expert. Public Defenders may redact billing entries (other than an indication of the hours spent and rate charged) from Expert invoices for purposes of submitting them for payment by the County. The billing should include a cause number, the name of the defendant and the tax ID number of the provider.
8. **ADMINISTRATIVE SUPPORT.** Each Public Defender shall maintain a minimum of ¼-time secretarial/paralegal support unless and until the Director of Public Defense concludes that a given Public Defender does not require such administrative support and notifies the Public Defender of that decision in writing. Each Public Defender shall maintain appropriate documentation of that Public Defender's arrangements for staff support and shall provide copies of that documentation to the Director of Public Defense.
9. **INTERPRETER SERVICES.** Grant County shall provide reasonable access to Certified Interpreters to interpret for Public Defenders at the Grant County Youth Services facility when Public Defenders need access to interpreter services.
10. **CASE APPOINTMENTS & LIMITATIONS.** The parties agree that under the case appointment standards set out in this Agreement, the Public Defender will be appointed to no more than **one hundred and eighty-seven and one-half (187.5)** case equivalents per Agreement year and will be expected to handle a full case load of **187.5** case equivalents or a pro-rata share for contracts less than one year unless otherwise provided in this Agreement. If, for any reason, the Public Defender refuses or is otherwise unable to handle a full equivalent case load the County may, in its discretion, terminate this Agreement pursuant to the termination provisions of this Agreement. Provided, however, that the public defender shall not be required to accept more than twenty-five (25) case equivalents in any one month without prior consent. If the Public Defender agrees to accept more than the above contracted case equivalents, in no case shall the total number of cases accepted and/or assigned exceed two hundred fifty (250) per calendar year. Every reasonable effort will be made to assign Class A or Sex Offense cases on an equal basis among all eligible Public Defenders.

During the term of this Agreement, Public Defender agrees to and shall accept court appointments to represent eligible indigent persons regardless of their race, color, national origin, age, marital status, sexual orientation, handicap, or political or religious affiliation on any felony or other applicable matter in the Juvenile Division of Grant County Superior Court.

- 11. CONFLICTS OF INTEREST.** The Public Defender shall implement and maintain a conflicts-check system and procedure for monitoring potential conflicts of interest in addition to any system and/or procedure used by the assigning entity. This conflict-check system and procedure must be approved by the Director of Public Defense.

The Public Defender shall not be required to accept an appointment under this Agreement if the particular appointment would create a bona fide, actual legal, ethical or professional conflict of interest for Public Defender. Public Defender shall promptly screen each case appointment for potential conflicts of interest and shall immediately inform the Director of Public Defense, in writing, of such actual or potential conflict and the reason therefore, and request the appointment of a substitute Public Defender. The Director of Public Defense will determine if an actual conflict exists. If the Public Defender disagrees with the Director's decision the Public Defender and Director may jointly submit the matter to the appropriate department of the Washington State Bar Association (WSBA) for determination or seek resolution from any court of competent jurisdiction. The Director of Public Defense will be ultimately responsible for resolution of all conflicts not otherwise resolved by the WSBA or the Court.

- 12. CASE EQUIVALENTS.** For purposes of calculating Public Defender's "case equivalents" under this Agreement, the following provisions shall apply:

Case equivalents shall be calculated as follows:

Type of Case	Case equivalent
BECCA Matters: At Risk Youth (ARY), Children in Need of Services (CHINS), Truancy	0.50 case equivalent
Offender matters:	
Misdemeanors thru Felonies	1.0 case equivalent
Declination hrs. (discretionary & mandatory)	1.0 case equivalent
Complex cases (>20 hours)	1.0 case equivalent
Other hearings and reviews, including"	0.33 case equivalent
Competency/Capacity, probation violations, Restitutions, manifest injustice, 3.5 and 3.6 hrs.	
Review of referred Diversion cases	0.10 case equivalent

The Director of Public Defense alone shall have the authority to declare a particular case as a "Complex case" per the above table. The case would then qualify for extraordinary case credit. Public Defender will receive additional case credit for each additional twenty hours (20) of reasonable work on the case. It is the responsibility of the Public Defender to keep track of time spent and request in writing the application of extraordinary case credit. Public Defender shall follow any policies of the Department of Public Defense regarding the requesting of extraordinary case credits.

In the event that any case equivalents are modified during the contract year, the Public Defender agrees to abide by the modifications from the time they are adopted to the end of

the contract term. Modifications of the case equivalents will be at the sole discretion of the Director of Public Defense.

The following cases will be considered "extraordinary cases" for the purposes of determining case equivalents:

- Certain persistent offender cases as determined in writing by the Director of Public Defense to be extraordinary.
- Other similar cases as determined in writing by the Director of Public Defense to be extraordinary in light of the amount and complexity of the evidence, complexity of the legal issues, number of defendants, length of trial, or similar factors.

A case will not be declared extraordinary simply because it takes time to resolve.

An appointment to any matter in which Public Defender is initially appointed but withdraws prior to the first pretrial hearing for any reason (including, without limitation, substitution of retained counsel or conflict of interest) shall not count as any type of case equivalent for that Public Defender.

An appointment to any matter in which Public Defender was previously appointed during the contract year (or term of the Agreement) shall not be further counted as any type of case equivalent if such matter was not fully concluded and subsequently arises again before the court and Public Defender continues representing the same person in such matter (e.g., if Public Defender was appointed to represent a person on a charge who fails to appear for trial, Public Defender's continued representation of such person following his/her later arrest shall be deemed as being a prior and ongoing representation and shall not count as any type of further or additional case equivalent). An appointment involving a seventy-two (72) hour hold where the Prosecuting Attorney does not then file the charge and the defendant is released shall not count as any type of case equivalent.

An assignment of a contempt case shall be counted as a one-half case equivalent regardless of the number of review hearings scheduled by the court for that litigant except as noted herein. If the Public Defender has prepared for or attended more than five (5) review hearings in a calendar year related to the same litigant, the Public Defender may apply to the Director of Public Defense for one (1) additional one-half case equivalent (0.5). The granting or denial of additional case equivalents shall be at the sole discretion of the Director of Public Defense.

In any matter where the defendant to whom the Public Defender has been appointed retains his or her own attorney or is reassigned an attorney not on the Felony Defense Panel at or before the first pretrial hearing, such case shall not be counted as a case appointment for the originally assigned Public Defender under this Agreement.

In any matter where the defendant to whom the Public Defender has been appointed is reassigned to another Public Defender on the Felony Defense Panel, at or before the first pretrial hearing, such case shall be counted only once as a case appointment under this

Agreement and shall be credited to the recipient of the reassignment unless otherwise determined by the Director of Public Defense.

In the event of a conflict of interest that requires the reassignment of a case appointment among the Felony Defense Panel, the reassignment shall count only once as a case appointment under this Agreement and shall be credited to the recipient of the reassignment unless otherwise determined by the Director of Public Defense.

If the client fails to appear at the first pretrial hearing or for some reason no pretrial hearing is scheduled and/or the Public Defender is required to withdraw for any other valid reason, other than for a bona fide conflict, then the Public Defender will be entitled to receive a one-half (0.5) case equivalent for that case. If the Public Defender is later reassigned to that case, the Public Defender will then be entitled to an additional one-half (0.5) case equivalent. In no event shall the Public Defender be entitled to more than a 1.0 case equivalent on the case.

For purposes of this section, the date on which the case is appointed, rather than the final date of disposition, shall be used to determine the month in which the case appointment is to be counted.

- 13. REPORTS.** The Public Defender shall submit a written monthly case assignment report to the Director of Public Defense, detailing by defendant name, case number, case type and case equivalency, the cases to which Public Defender was appointed pursuant to this Agreement during the preceding month. The report shall be submitted by the fifth (5th) day of each month for assignments made during the preceding month.

In the alternative, the Public Defender may agree that the Director of Public Defense or his/her designee shall provide a written monthly case assignment report to the Public Defender detailing the defendant name, case number, case type and case count equivalency the cases to which Public Defender was appointed pursuant to this agreement during the preceding month. If the Public Defender does not respond with two (2) days of receipt of the report with any changes or corrections, the report then shall be deemed final for all purposes.

CONTINUING EDUCATION/REPORT: Each Public Defender is required to attend training approved by the Washington State Office of Public Defense in each calendar year. The Public Defender shall submit an annual report documenting his/her having attended at least seven (7) hours of said training. The report shall be in a form and due at such time as to enable the County to comply with any reporting as required in RCW 10.101.050.

NON-PUBLIC DEFENSE LEGAL SERVICES/REPORT: Each Public Defender shall report to the County hours billed for non-public defense legal services, *pro bono* cases, and private practice cases in the previous calendar year, including the number and types of private cases. The report shall be submitted in a form and at such time that allows the County to comply with the requirements of RCW 10.101.050. The part time Public Defender shall submit an annual report to the Director of Public Defense documenting

his/her **Attorney Time Reporting Requirements** (in accordance with RCW 10.101.050) on the extent of his/her private caseload **only as deemed necessary** by the Director of the Department of Public Defense.

The Public Defender also, by his or her signature, represents and warrants to the County that the Public Defender is a member of the Washington State Bar Association, in good standing. If there is any question regarding the good standing of the Public Defender the County can require that the Public Defender provide it a Certificate of Good standing issued by the Washington State Supreme Court.

14. CLIENT ELIGIBILITY. The Court, consistent with applicable laws, rules and standards, shall be the sole determiner of the eligibility of any particular person for representation by Public Defender under this Agreement. If Public Defender is appointed to represent a juvenile and subsequently discovers that such juvenile may not be eligible to receive such publicly-provided representation under the standards established by the Court, Public Defender shall immediately notify the Court of such possibility for purposes of the Court making a re-determination as to eligibility, provided that the notification does not violate any client privilege or create an ethical violation for the Public Defender. If the Court then determines that such juvenile is not eligible for publicly-provided representation, the appointment of Public Defender to represent such juvenile shall be rescinded and such juvenile shall be required to retain his/her own legal counsel. Public Defender shall not thereafter represent such juvenile in such matter on a retained-fee basis unless such juvenile applies for and receives the Court's permission allowing such representation.

15. CONTINUED REPRESENTATION. In the event that a change of venue is granted to a juvenile for whom Public Defender has been appointed to represent under this Agreement, Public Defender shall continue to represent such juvenile in the court to which venue is transferred until the case can be transferred to an appropriate Public Defender in that county if such transfer is deemed appropriate.

The Public Defender's obligations to provide representation, pursuant to this Agreement, includes the obligation to timely and fully complete all cases or matters encompassed by this Agreement. In that regard, Public Defender shall continue to provide representation for those persons whom Public Defender was appointed to represent and whose case was not concluded during the term of this Agreement or otherwise disposed of such as by appointment to successor counsel, and Public Defender's obligation to fully complete all cases or matters encompassed by this Agreement following its termination shall not in any way entitle Public Defender to receive any additional compensation beyond the compensation amount(s) specified in this Agreement.

In the event that this Agreement is terminated, the Public Defender shall be responsible for continuing to represent clients on any pending cases until the case is completed. Provided, that for good cause shown, the Director of Public Defense, in his/her sole discretion, may transfer one or more pending cases to other attorneys in the Grant County Public Defense system. Those cases will continue to be counted as full cases for the departing defender and shall, at the Director of Public Defense's discretion, be counted as a full case credit for

the receiving attorney depending on the stage of the proceeding. If the transfer is done prior to the first pretrial hearing, the case will not count for the departing Public Defender and will count as one full case count for the receiving Public Defender.

16. CONSULTATIONS. The Public Defender shall be available for reasonable consultations with the client. The Director of Public Defense shall monitor client contacts to ensure that the Public Defender is maintaining reasonable contact with the client. The Public Defender shall have a telephone system that will accept messages from clients after normal business hours or during times when the Public Defender is not in the office.

17. COOPERATION WITH OTHER DEFENSE PANEL PUBLIC DEFENDERS AND DIRECTOR OF PUBLIC DEFENSE. The Director of Public Defense shall assign case appointments. The panel-Public Defenders agree to cooperate with the Director of Public Defense in assigning case appointments. The Director of Public Defense shall serve as spokesperson for all participating Public Defenders and as liaison with the courts, the Prosecutor's Office and the Board of County Commissioners.

The Public Defender agrees that, by entering into this Agreement, the Public Defender consents to the full authority of the Director of Public Defense. In regard to file reviews, the Public Defender specifically consents to permit the Director of Public Defense to review any file subject to case assignment as long as the review is confidential and will not waive any privilege. If the review by the Director of Public Defense will invade a privilege, create a potential conflict, or violate any ethical requirement, then the Public Defender agrees to permit another designated attorney to review the file and to report to the Director of Public Defense. The Director of Public Defense has the authority to assign or designate 1st Chair and 2nd Chair counsel in any case that he/she determines is appropriate.

The Public Defender agrees to abide by the specific terms, conditions and practice requirements of Grant County Public Defense as they apply to the Public Defender's practice including, but not limited to, caseload limitations; specific training requirements (including, but not limited to, attendance at Grant County Public Defense sponsored Continuing Legal Education seminars); periodic mandatory meetings of counsel; and completion of certain specific tasks including, but not limited to, managing initial client appearances in a rotation; and other such tasks and/or practice standards or requirements as may become necessary for the proper administration of Grant County Public Defense.

18. NON-ASSIGNMENT AND TEMPORARY SUBSTITUTIONS. Except as otherwise provided within this Agreement, Public Defender shall not allow or arrange for any other person to perform any of the services required by this Agreement, nor shall Public Defender be entitled to assign, subcontract out, or otherwise delegate any of Public Defender's rights, responsibilities, or and obligations under this Agreement.

Provided that, however, subject to the approval of the Director of Public Defense, Public Defender and any of the other Felony Defense Panel Public Defenders may mutually agree to make temporary, substitute appearances for each other on routine criminal docket matters and routine court hearings on an as-needed basis provided that Public Defender is actually and unavoidably unavailable and provided that such substitution is expressly

authorized on the court record by the Court and the particular person(s) being represented by Public Defender who is/are affected by such temporary substitution of legal counsel. Any compensation or consideration to be paid or given by Public Defender to the other Felony Defense Panel Public Defenders for such substitution(s) shall be a matter of direct negotiation and agreement between Public Defender and the other Felony Defense Panel Public Defenders, and said other Public Defenders shall not be entitled to receive any additional compensation from the County for such substitution(s).

Provided further that, however, in the event that Public Defender needs or desires to take up to a maximum of two (2) consecutive weeks leave of absence from the practice of law during the term of this Agreement and is unable to obtain the assistance of the other Felony Defense Panel Public Defenders during such temporary absence, the Director of Public Defense may seek and obtain the assistance of another qualified Attorney to make temporary, substitute appearances for Public Defender during such absence on routine criminal docket matters and routine court hearings on an as-needed basis provided that Public Defender and such other qualified Attorney jointly prepare, sign and file a written certification with the Court (with a copy to be provided to the County) in all such matters and hearings that expressly certifies that such other qualified Attorney has reviewed this Agreement and fully meets all applicable criteria, qualifications, and requirements under this Agreement to render legal defense services to indigent persons and provided further that such temporary substitution is expressly authorized on the court record by the Court and the particular person(s) being represented by Public Defender who is/are affected by such temporary substitution of legal counsel.

Any compensation or consideration to be paid or given by Public Defender to such other non-panel Attorney for such substitution(s) shall be a matter of direct negotiation and agreement between Public Defender and such other Attorney, and such other Attorney shall not be entitled to receive any compensation from the County for such substitution(s). Public Defender acknowledges and agrees that Public Defender shall be strictly responsible to ensure that such other Attorney fully complies with all terms and conditions of this Agreement during such temporary absence period (including, without limitation, the requirement to maintain the insurance coverage specified in this Agreement) and that Public Defender shall be strictly liable for any and all damages or losses sustained as a result of such other Attorney's non-compliance with the terms and conditions of this Agreement.

- 19. OTHER APPOINTMENTS.** Except for the Court appointments expressly contemplated and provided for in this Agreement, or disclosed to and approved of by the Director of Public Defense, the Public Defender shall not enter into any other contract or agreement to receive appointments from any other court to perform criminal defense or criminal prosecution services.
- 20. JUDICIAL SERVICE.** Public Defender shall not serve in any judicial capacity (including judge pro tem or court commissioner) in or for any court located within the County on any criminal, juvenile, or infraction matter. Further, Public Defender shall not serve in any judicial capacity (including judge pro tem or court commissioner) in any case in which the County is a party or in any case in which the state of Washington is a party

and is represented by the County's Prosecuting Attorney's Office or an appointed special deputy of such office.

21. TERMINATION.

- a. **Involuntary Termination.** The County may terminate this Agreement immediately if, in the sole determination of the Director of Public Defense, the Public Defender is not providing adequate legal services or is in material non-compliance with the terms of this Agreement. In the case of Involuntary Termination, the Director of Public Defense may direct that some or all pending cases be assigned to other qualified Public Defenders. In such circumstances, the Public Defender shall promptly, but in no event later than three (3) days after notice of Involuntary Termination, identify to the Director of Public Defense any pending cases in which special circumstances exist, such as imminent trial schedule, lengthy or complex course of litigation, special client circumstances, or other client or case based interests that may professionally require continued representation by the Public Defender. In the event that the Director of Public Defense and Public Defender cannot agree on reassignment or retention of particular cases, the matter shall be referred to the presiding judge for determination of the issue of assignment of counsel. The Public Defender will be responsible for the completion of all cases not reassigned.
- b. **Voluntary Termination.** Either party may terminate this Agreement upon One-Hundred and Twenty (120) days' advance written notice for any reason. The parties may mutually agree in writing to an earlier effective date. The Public Defender will be paid pro-rata if the effective date of the notice falls on any date other than the last day of the month. The terminating Public Defender shall be responsible for completion of all cases assigned before the effective date and shall not withdraw or transfer such cases to other counsel unless otherwise authorized or directed by the Director of Public Defense.
- c. **Limited Continuation of Certain Terms:** The terms of this Agreement for payment of additional compensation for serious cases, trials, and extraordinary cases will continue to apply to those cases assigned during the Agreement term but finished by the terminating Public Defender after the effective date of termination. In the event that the County incurs extraordinary costs related to or required by the Public Defender's departure, the Public Defender agrees to be responsible for those costs.

- 22. AUTOMATIC TERMINATION.** In the event that the Juvenile Division of Grant County Superior Court or any other court of competent jurisdiction enters an order that precludes Public Defender from receiving any further Court appointments hereunder, for any reason whatsoever, this Agreement shall automatically terminate without further notice as of the date such order is entered by the Court. In the event that the Court enters such an order because of unethical or unprofessional conduct by Public Defender and/or because of Public Defender's breach of this Agreement and the Court determines at that time that the circumstances justify or require a substitution of appointed counsel for any person(s) whom Public Defender was appointed to represent hereunder, Public Defender shall be fully liable to the County for any additional costs or expenses incurred by the County relating to such

substitute appointment(s) in addition to any other damages sustained by the County arising out of Public Defender's conduct and breach.

In the event the Public Defender's license to practice law in the State of Washington is revoked or otherwise limited or restricted, or in the event the Public Defender is disbarred or suspended from the practice of law, or in the event the Public Defender receives a recommendation from the Washington State Bar Association for suspension or disbarment, the Public Defender shall automatically be terminated without further notice as of the effective date of the revocation, restriction, disbarment or suspension, or the Washington State Bar Association recommendation.

23. INDEMNIFICATION AND HOLD HARMLESS. Public Defender hereby agrees to and shall fully indemnify the County and hold the County, its officers, employees, and agents fully harmless for any and all losses, damages, costs, charges, claims, demands, suits, or actions of whatsoever nature directly or indirectly arising out of or by reason of Public Defender's (or any person, agent, contractor, or entity acting for or on behalf of Public Defender or at Public Defender's request or direction) acts, defaults, errors and/or omissions of whatsoever nature in the performance of legal services to any person under the terms of this Agreement. In the event any suit or legal proceeding is brought against the County or any of its officers, employees or agents at any time on account of or by reason of any such acts, defaults, errors and/or omissions, Public Defender hereby covenants and agrees to assume the defense thereof and to defend the same at Public Defender's sole cost and expense and to pay any and all costs, charges, Public Defenders' fees, and other expenses as well as any and all judgments or awards that may be incurred by or entered against the County or any of its officers, employees or agents in such suits or other legal proceedings. The indemnification and hold harmless provisions of this paragraph shall survive the termination of this Agreement.

24. INSURANCE. Throughout the entire term of this Agreement and throughout any other longer time period during which Public Defender is obligated to perform services or duties hereunder, Public Defender shall obtain and continuously maintain, at Public Defender's sole cost and expense, a policy of professional liability insurance in an amount **not less than One Million and No/100 Dollars (\$1,000,000.00) per claim nor less than One Million and No/100 Dollars (\$1,000,000.00) in the aggregate during the policy term.** Said policy shall include coverage as an additional insured for any other Public Defender(s) acting for or on behalf of Public Defender in the performance of this Agreement. Said policy shall provide professional liability insurance coverage for any errors and/or omissions by Public Defender during the course of performing legal services under this Agreement, and shall further require that the insurance company provide the County with no less than thirty (30) days' prior written notice in the event the policy is cancelled or materially altered. Said policy shall also comply with all applicable state of Washington insurance requirements and shall be issued by an insurance company authorized to conduct business and issue insurance in the state of Washington. Contemporaneously with Public Defender's execution of this Agreement, Public Defender shall provide the County and its designated Risk Manager with written proof and confirmation that such insurance policy and coverage has been obtained within

fifteen (15) days of signature by the parties to this Agreement and Public Defender shall provide the Risk Manager with annual written proof and confirmation that such insurance policy and coverage continues to exist throughout the term of this Agreement on or before said policy's term of expiration.

25. RELATIONSHIP OF THE PARTIES. The parties understand, acknowledge, and agree that Public Defender is not an employee of the County and that Public Defender, as of the date of this Agreement and throughout its entire term, is and will be acting and operating as a fully independent contractor. In that regard, except as otherwise specified in this Agreement, the County shall have no authority or duty whatsoever to control or supervise the performance of Public Defender's duties and services hereunder, which control or supervisory capacity is fully vested within the inherent power and discretion of the Court(s) and/or the Washington State Bar Association.

This Contract is for the personal professional services of the Public Defender. The Public Defender shall not assign or subcontract this Agreement in whole or in part.

This Agreement does not create an employer/employee relationship between the parties. It is the parties intent that each panel-Public Defender will be an independent contractor and not a County employee for all purposes, including, but not limited to, the application of the Fair Labor Standards Act minimum wage and overtime payments, the Federal Insurance Contribution Act, the Social Security Act, the Federal Unemployment Tax Act, the provisions of the Internal Revenue Code, the Washington Industrial Insurance Act (Title 51 RCW), Washington wage and hour laws, and the Washington Employment Security Act (Title 50 RCW). The Public Defender is retained solely to represent indigent persons and is not acting in any administrative capacity on behalf of the County. The panel Public Defender will retain sole and absolute discretion in the judgment, manner and means of providing his or her legal representation under this Agreement subject to the rights of the Director of Public Defense to supervise and discipline each panel-Public Defender. The parties agree this Agreement shall not be construed as creating any joint employment relationship between the Public Defender and/or any of the Public Defender's officers, employees, agents or subcontractors and the County, and that the County will not be liable for any obligation incurred by the Public Defender including, but not limited to, unpaid minimum wages and/or overtime premiums. The parties further agree that the County is not responsible for providing any financial or other support for equipment, training, administrative costs or research tools for the Public Defender unless specifically agreed to by the Director of Public Defense.

26. NON-DISCRIMINATION. The Public Defender agrees that he or she and any of the Public Defender's officers, employees, and agents will comply with Titles VI and VII of the 1964 Civil Rights Act as amended in 1972; Executive Order 11246 as amended by Executive Order 11375; Sections 503 and 504 of the Rehabilitation Act of 1975; the Age Discrimination in Employment Act of 1967; the Vietnam Era Veteran Readjustment Assistance Act; the Washington State Laws Against Discrimination, Chapter 49.06 RCW; and any other applicable law or regulation prohibiting discrimination.

27. PROFESSIONAL CONDUCT. The Public Defender shall execute this Agreement independent of any governmental control, except as provided in this Agreement. The Public Defender shall represent clients, preserve client confidences, and discharge his/her duties hereunder in accordance with the Rules of Professional Conduct pertaining to Public Defenders licensed to practice law in the State of Washington and any applicable Court rules.

It is understood at the making of this Agreement that the Public Defender herein is not currently qualified concerning the representation of a death penalty case. In the event of a felony case wherein the Prosecuting Attorney's Office files notice of its intent to seek the death penalty, the County will take the necessary steps to provide for death penalty qualified Counsel to serve as the lead Public Defender, outside the provisions of this Agreement, unless same can be handled by a Felony Defense Panel Public Defender working under the Agreement. In the event that the County is required to retain the services of a death penalty qualified Counsel, the Public Defender will provide all necessary support services including, without limitation, reasonable secretarial services. The Director of Public Defense will appoint a Public Defender to sit as a second chair Public Defender, and to provide support to the lead chair; this Public Defender shall take appropriate steps to become death penalty qualified after gaining the requisite experience. In such event, the Public Defender will then be a death penalty qualified Public Defender in the event of any subsequent death penalty cases that might arise during the duration of this Agreement. The Public Defender may then be appointed on any subsequent death penalty cases once qualified as a death penalty Public Defender.

Nothing in this Agreement shall be construed to impair or inhibit the exercise of independent professional judgment by the Public Defender with respect to any client wherein a Public Defender-client privilege has been established pursuant to the terms of this Agreement.

Nothing in this Agreement shall require or authorize any Public Defender to perform any acts in any manner proscribed by, or neglect to perform any duties required by the Rules of Professional Conduct promulgated by the Supreme Court of the State of Washington and adopted in RCW 2.48.230 as now or hereafter amended, or required or proscribed by applicable case law, court rules, regulations or statute. This Agreement shall neither require nor authorize any Public Defender to engage in any conduct deemed improper or unethical in opinions of the Washington State Bar Association.

The Public Defender and/or support staff employed by the Public Defender shall not solicit or accept compensation from any client appointed under this Agreement.

28. RECORDS AND CLIENT FILES. Records of all matters covered by this Agreement (with the exception of client files which are not subject to the Public Records Act), shall be established and maintained by the Public Defender in accordance with requirements set forth in the Washington State Archives' *Local Records Retention Schedule*, at www.sos.wa.gov. Any question as to what does or does not constitute a public record

should be directed the County's Public Records Officer in the Commissioners' office at (509) 754-2011 ext. 2938.

The Public Defender shall be responsible for maintaining and protecting a client's files. The Public Defender shall retain and/or release client files in accordance with appropriate ethical and legal requirements. The Public Defender shall return client files to the Director of Public Defense, at no expense to the County, when the client's file needs to be transferred to another Public Defender who is a member of the County's Public Defense Panel.

29. SUPPLEMENTAL GENERAL CONDITIONS.

- a. **Integrated Document:** This Agreement embodies the entirety of the agreement between the County and the Public Defender, and its applicable terms and conditions and supersedes any and all other agreements, contracts and understandings, written or oral (including, without limitation, any previous agreement executed by the parties). No verbal agreements, conversations, understandings, or writings with any officer, official, agent, or employee of the County prior to the execution of this Agreement shall affect or modify any of the terms, conditions, or obligations contained in any documents comprising this Agreement. Any such verbal agreements, conversations, understandings, or writings shall be considered as unofficial and in no way binding upon the County.
- b. **When Rights and Remedies Are Not Waived:** In no event shall any payment by the County or acceptance of payment by the Public Defender constitute or be construed to be a waiver by such party of any breach of contract, covenant, or default which may then exist on the part of the other. The making or acceptance of any such payment while any such breach or default shall exist shall in no way impair or prejudice any right or remedy available with respect to such breach or default.
- c. **Severability Of Provisions:** If any term, covenant, condition, or provision of this Agreement is held by a court of competent jurisdiction, arbitrator or other reviewing body with jurisdiction to be void, invalid, or unenforceable, the remainder of the Agreement shall not be affected thereby and remain in full force and effect, if such remainder would then continue to conform to the terms and requirements of applicable law, and shall continue in full force and effect and shall in no way be affected, impaired or invalidated thereby.
- d. **Disputes – Arbitration:** Disputes or claims arising under this Agreement between the County and the Public Defender shall initially be resolved by consultation between the Public Defender and the Grant County Board of Commissioners and are to be resolved in reference to and in accordance with the Laws of the State of Washington. If resolution of such dispute or claim is not obtained within fifteen (15) days of such consultation, the proposal then shall be submitted to final, binding arbitration in accordance with the rules of Arbitration of the American Arbitration Association. All Arbitration decisions are final and binding on all parties. The parties may mutually

agree to different rules for the resolution of the arbitration, as long as the agreement is in writing and signed by an authorized party representative.

- e. **Modifications:** Nothing contained in this Agreement shall be deemed to preclude any party from seeking modification of any term contained herein should an unforeseen and material change in circumstances arise. Any agreement, contract, understanding, or modification made between the parties subsequent to this Agreement, including any formal addenda or other modification to the terms and conditions of this Agreement must be executed with identical formality as this Agreement; otherwise the same shall not be enforceable.
- f. **Assignability:** The Public Defender may not assign his/her rights or obligations under this Agreement to a third party.
- g. **No Waiver:** No failure of the County or the Public Defender to insist on the strictest performance of any term of this Agreement shall constitute a waiver of any such term or an abandonment of this Agreement.
- h. **Governing Law:** This Agreement shall be governed by the laws of the State of Washington. Should this Agreement be subject to scrutiny by a court of law, arbitrator or other reviewing body with jurisdiction, it shall be interpreted as if drafted by the County.

SIGNED this ____th day of May, 2023.

**BOARD OF COUNTY COMMISSIONERS
GRANT COUNTY, WASHINGTON**

Rob Jones, Chair

Cindy Carter, Vice Chair

Danny Stone, Member

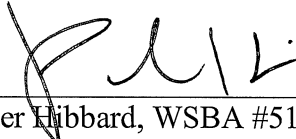
Attest:

Barbara J. Vasquez, Clerk of the Board

Peter Hibbard

PUBLIC DEFENDER

NOTE:
Agreement must be signed in the
presence of a Notary. Notary block is
below


Peter Hibbard, WSBA #51883

Address: 7979 Dune Lake Road

Moxes Lake, WA 98837

Phone: 509-759-8095

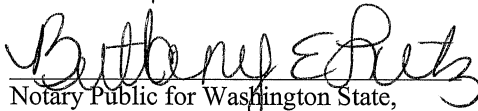
E-mail: pmhibbard@gmail.com

Tax ID #: 647164835

State of Washington)
) ss.
County of Grant)

I hereby certify that I know or have satisfactory evidence that Peter Hibbard signed this instrument and acknowledged it to be their free and voluntary act for the uses and purposes mentioned in the instrument.

DATED: 5/23/2023


Notary Public for Washington State,
residing in Grant County.
My Commission expires: 10/06/2025

